

9
No. 2649

United States
Circuit Court of Appeals
For the Ninth Circuit.

S. H. MILLWEE and W. W. BALDWIN,
Plaintiffs in Error,
vs.
WM. N. C. WADDLETON,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Alaska, Division No. 1.

Filed

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F. D. Monckton,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys of Record.]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1122—A.

S. H. MILLWEE and W. W. BALDWIN,
Plaintiffs in Error.

vs.

WM. N. C. WADDLETON,
Defendant in Error.

J. H. COBB, Juneau, Alaska,
Attorneys for Plaintiffs in Error.

Messrs. WINN & BURTON, Juneau, Alaska,
Attorneys for Defendant in Error.

—————

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1122—A.

WILLIAM N. C. WADDLETON,
Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,
Defendants.

Complaint.

1. Plaintiff complains and alleges that on the 12th day of June, A. D. 1914, and for more than ten years immediately preceding said date, plaintiff was in the actual, exclusive, sole, notorious continuous, uninterrupted hostile, open and adverse possession under claim of ownership and is now the owner and entitled to possession

J. T. R.
Dep. Clk.

of that certain lot, parcel or piece of land situate in the City of Juneau, Territory of Alaska, and more particularly described as follows, namely:

Lot No. 6 in Block No. 13 of said city of Juneau, Alaska.

2. That while plaintiff was the owner of said above-described lot, and in the actual and exclusive possession thereof and on, to wit, the *12th* day of June, 1914, the above-named defendants unlawfully entered into the possession of said lot, or a greater portion thereof, and ousted and ejected the plaintiff therefrom, and now unlawfully and wrongfully withholds the possession thereof from the plaintiff to his damage in the sum of One Thousand (\$1000) Dollars.

3. That the defendants have placed upon said above-described lot number and have commenced the construction of a [1*] building thereon, and have threatened to tear down the dwelling of plaintiff which is situate upon said above-described lot, and unless restrained by this court during the pendency of this action, the defendants will erect a building upon said described lot and tear down the dwelling of this plaintiff situate thereon.

WHEREFORE plaintiff prays judgment against the defendant.

First. For the restitution of the possession of the premises from which plaintiff has been ousted and ejected by the defendants in this complaint fully set forth and described.

*Page-number appearing at foot of page of original certified Record.

Second. For the sum of \$1000. for the withholding thereof.

Third. That the defendants be restrained from erecting any building or other structure or tearing down the dwelling of said plaintiff, pending this cause, and forever enjoined from interfering with the possession of the plaintiff in and to said Lot No. 6 in Block No. 13 of the City of Juneau, Alaska, or any part thereof.

Fourth. For costs and disbursements of this action.

Fifth. For such other and further relief as plaintiff may be entitled to.

WINN & BURTON,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Wm. N. C. Waddleton, being first duly sworn, on oath deposes and says: I am the plaintiff in the above and foregoing entitled action; I have read the foregoing complaint, know the contents thereof and the matters and things therein set forth are true as I verily believe.

WM. N. C. WADDLETON,

Subscribed and sworn to before me this 16 day of June, 1914.

[Seal]

NEWARK L. BURTON,
Notary Public for Alaska. [2]

My commission expires on the 8th day of Nov. 1914.

[Endorsed]: No. —. In the District Court for the Territory of Alaska, Division No. 1. William

N. C. Waddleton, Plaintiff vs. S. H. Millwee and W. W. Baldwin, Defendants. Complaint. Winn & Burton, Attorneys for Plaintiff. Juneau, Alaska. Filed in the District Court. District of Alaska, First Division. Jun. 16, 1914. J. W. Bell, Clerk. By J. J. Clarke, Deputy. [3]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1122—A.

WM. N. C. WADDLETON,

Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,

Defendants.

Answer.

Now come the above-named defendants, by their attorney, and for answer to the complaint, allege:

I.

They deny all and singular the allegations in said complaint contained, except the allegations of their possession.

And for a further and affirmative defence, they allege:

I.

That the defendant S. H. Millwee is the owner in fee simple, and entitled to the possession of the lot described in the complaint, and the defendant W. W. Baldwin is in possession as tenant of said S. H. Millwee, and he has no other interest therein.

WHEREFORE they pray that the plaintiff take nothing by this action, that his complaint be dismissed with costs and the defendants be quieted in the possession of said lot, and for general relief.

J. H. COBB,

Attorney for Defendants. [4]

United States of America,

Territory of Alaska,—ss.

S. H. Millwee, being first duly sworn, on oath deposes and says: I am one of the defendants above named. I have read the above and foregoing answer and the same is true as I verily believe.

S. H. MILLWEE,

Subscribed and sworn to before me this 13th day of July, A. D. 1914.

[Seal]

J. H. COBB,

Notary Public in and for the Territory of Alaska,

My commission expires Nov. 9th, 1914.

Service admitted July 13th, 1914.

WINN & BURTON,

Attorneys for Plaintiff.

[Endorsed]: Original. No. 1122-A. In the District Court for the Territory of Alaska, Division Number One, at Juneau. Wm. N. C. Waddleton, Plaintiff, vs. S. H. Millwee and W. W. Baldwin, Defendant. Answer. J. H. Cobb, Attorney at Law, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division, July 14, 1914. J. W. Bell, Clerk. [5]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1122—A.

W. N. C. WADDLETON,

Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,

Defendants.

Amended Reply.

Comes now the above-named plaintiff by his attorneys, Winn & Burton, and leave of the Court being first had and obtained files this his amended Reply in the above-entitled cause, and alleges as follows:

I.

Plaintiff denies each and every allegation contained in said affirmative defense excepting that the defendant, W. W. Baldwin, has no interest in the lot described in the complaint herein.

II.

And further replying to the Answer in the above-entitled cause, and by way of pleading the statute of limitations plaintiff alleges that he was in the actual, exclusive, sole, notorious, adverse and hostile possession of Lot 6 in Block 13 of the City of Juneau, Alaska, being the premises described in the complaint herein for more than 10 years immediately preceding the time when he was ousted from a portion of said Lot 6, Block 13, as alleged in his complaint, and more than 10 years immediately preceding the commencement of this action, and more than

10 years immediately preceding the filing of defendant's answer and affirmative defense and cross complaint herein.

WHEREFORE plaintiff asks for judgment as in his complaint herein prayed for. [6]

WINN & BURTON,

Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Wm. N. C. Waddleton, being first duly sworn, on his oath deposes and says: that he is the plaintiff in the above-entitled action; that he has read the foregoing amended Reply; knows the contents thereof and that he verily believes the matters and things therein stated are true.

[Endorsed]: No. 1122-A. In the District Court for the Territory of Alaska, Division No. 1. W. N. C. Waddleton, Plaintiff, vs. S. H. Millwee and W. W. Baldwin, Defendants. Amended Reply. Winn & Burton, Attorneys for Plaintiff, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Sept. 23, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [7]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1122—A.

WILLIAM N. C. WADDLETON,

Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,

Defendants.

Judgment and Decree.

This action came on regularly for trial on the 24th day of September, 1914, the plaintiff being represented by Messrs, Winn & Burton, and the defendant by J. H. Cobb, Esq. A jury of twelve persons were regularly empaneled and sworn to try said action. After submitting all of the evidence, the argument of counsel and instructions of the Court, the jury retired to consider their verdict, and subsequently returned into court with the verdict signed by the foreman, and being called, answered to their names and say:

“We, the Jury in the above-entitled cause, find for the plaintiff, that he is entitled to the possession of the property described in the complaint and that he is the sole owner thereof as against the defendant.”

AND IT APPEARING TO THE COURT that the defendant, W. W. Baldwin, having by his answer disclaimed any interest in the property described in the complaint, except as tenant of said defendant, S. H. Millwee,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff is the sole owner, as against the defendant and defendants' grantors and those claiming by, through or under said defendants' of that certain lot described in the complaint in said above-entitled cause, to wit, Lot No. Six (6) in Block No. Thirteen (13) of the City of Juneau, Alaska; and that the plaintiff have and recover of and from the defendants the possession of said lot, and that the defendants and each of them be ejected from the possession of said lot or so much of the same as they are in [8] possession of, and that the plaintiff have and recover his costs and disbursements incurred in this action amounting to the sum of \$100,25.

For all of which let execution issue.

Done in open court this 30th day of October, A. D. 1914.

ROBERT W. JENNINGS,
Judge.

O. K. as to form.

COBB.

[Endorsed]: No. 1122-A. In the District Court for the Territory of Alaska, Division No. 1. William N. C. Waddleton, Plaintiff vs. S. H. Millwee and W. W. Baldwin, Defendant. Judgment and Decree. Winn & Burton, Attorneys for Plaintiff, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Oct. 30, 1914. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [9]

[**Testimony of Wm. N. C. Waddleton, for Plaintiff.**]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1122—A.

WM. N. C. WADDLETON,

Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,

Defendants.

Bill of Exceptions.

Be it remembered that this cause came on for trial on the —— day of ——, 1914, on the original complaint and answer, before the Judge of this court and a jury of twelve duly chosen, impaneled and sworn to try the issues. Opening statements having been made by counsel on both sides, the following proceedings were had:

WM. N. C. WADDLETON, the plaintiff, being called and sworn as a witness in his own behalf, testified as follows:

Direct Examination by Mr. BURTON.

My name is Wm. N. C. Waddleton. I am the plaintiff in the case of Wm. N. C. Waddleton vs. S. H. Millwee and W. W. Baldwin involving Lot No. 6 in Block 13, townsite of Juneau, Alaska. I have lived in Juneau for 21 years and a few months more; for the last eighteen years I have lived continuously on Lot 6 in Block 13, Juneau; I might have been in some other cabin for a night or two during 1895, but

I have lived continuously from 1896, the Spring of 1896, I think, continuously since then, until now in that cabin. [10*—1†] The lot is 50 by 90 feet in size. Mr. Winterholler continued to keep his cows in and hogs under this cabin that was a barn, until about 1893 when it blew down. Several people claimed title to the lot; J. T. Hamilton claimed title to it; Casebolt claimed it also; I had allowed Robert Rushlight to live in the cabin erected by Attorney J. T. Hamilton on the lot for a short time, and while Rushlight was on a drunk he sold it to Casebolt; and Casebolt, at the time of the contest before the trustee of the Townsite, gave me a quitclaim deed to it. In 1896 I occupied the lot alone and claimed the ownership to it at that time. This contest was in November, 1898. The Pullen heirs, through John G. Heid contested for it, and Lyons refused to acknowledge my claim and gave the deed to the Pullen heirs, he gave that deed to them during the year 1898. I was still in possession of the lot, and in 1901 or 1902 Thomas R. Lyons told me that the Department at Washington had decided against me on the appeal. In 1905 after that Mr. Heid, as the representative of the Pullen heirs, wrote to me to vacate the lot and cabin, and I have that letter here now that he wrote. I told him to proceed to do something—bring suit or something. I have been living on that same lot ever since the issuance of the patent and am still living on the lot, and the only time any one has attempted to

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

dispossess me or disturb me in any way at all was on the 12th day of June, 1914. In 1906 I built a sewer down across the lot from my cabin to a connection with the city sewer. I had a fence along in the front of the lot and running back on the lower side of it and turned up the hill; that is about nine or ten years ago or longer. After that time I built a stone wall there along in front of the lot and fixed some ground there for a garden and have had some flowers in there and alongside of the house. I built a foundation by the side of my cabin on this lot a year or two after that, built the foundation to place a house on it. I have slept in that cabin on the lot longer than any place since I was born, and expect to die there. [11—2] I have occupied the lot and paid the taxes on it all the time and claimed it.

Cross-examination by Mr. COBB.

I paid the taxes for all the years. I did allow Judge Delaney to pay the taxes one year for me; I wrote to Judge Delaney to pay them for me and he paid them; I think I paid for them all the years except the one year that he paid them for me. I paid them in 1913 when they were delinquent for the years 1909, 1910 and 1911. It is true that in July, 1912, the taxes were paid that year by Mr. Greene, for me at my request, with money which he had belonging to me. It is true that the receipt was given all the time and the assessment of the taxes made in the name of the Pullen heirs, John G. Heid, agent, but I objected to that each time I paid the taxes. About 9 years ago Mr. Gustafson bought the lot next and put a cabin there and over on my lot 23 inches,

and after that I notified him to take it off. I was in the Juneau jail at the time Greene paid the taxes for me, and that is the reason he paid them for me; and at that time he looked after the place for me and had the key while I was away. I never was away from the cabin for more than two or three nights at a time, and that would be when I was over at Douglas, or some place around close. I knew the Pullen heirs claimed this lot and I knew that the Townsite Trustees had decided in their favor and given them a deed for it as against me, and I was notified by Judge Lyons that the Department at Washington had decided against me when the contest was appealed. I remained in possession of the lot and claimed it after that because I thought I had a better right, the Pullen heirs had not been heard from and I did [12—3] not think they could get it. As a matter of fact only one of the Pullen heirs had ever been in Juneau, and that was in 1888. No claim whatsoever had been made by any of the Pullen heirs to the land in controversy and it formed no part of the inventoried Pullen estate and had never been occupied by any of the Pullen heirs. I was confined in the jail at Juneau for three months in the year 1903. I knew at the time that Heid wrote me the letter telling me to vacate the lot or pay rent that the Pullens claimed the lot. I answered the letter that Mr. Heid wrote to me and have a copy of the answer here.

Judge Lyons served a written notice on me of the decision of the land office against me on the contest.

WHEREUPON, defendants offered in evidence a

letter from Wm. N. C. Waddleton to John G. Heid, which said letter was received in evidence without objection, and is in words and figures as follows:

“Juneau, District of Alaska.

May 20th, 1905.

John G. Heid, Esq.,
Juneau, Alaska.

Dear Sir:—

It is not my intention to be unfair to you, personally, but I feel that as you are in position to make some concession in Re Lot 6 Block 13, it would not be out of keeping with generosity and mere dignity if you would suggest some sort of compromise.

I am not entirely unappreciative of my surroundings and position in this matter, and have long desired to settle it, amicably, if possible, therefore, I await your further action.

Yours etc., etc.,

WM. N. C. WADDLETON.”

I received a quitclaim deed to Lot 6 in Block 13 from Mr. Rushlight, about the time of this contest for the deed before the townsite trustee. I have lost the quitclaim deed; it was never placed of record in the recorder's office. [13—4]

Whereupon, defendants introduced in evidence, without objection, a letter from John J. Heid addressed to Wm. N. C. Waddleton, which is as follows:

[Defendant's Exhibit "A"—Letter Dated Juneau, Alaska, May 18, 1905—John G. Heid to Wm. N. C. Waddleton.]

“Juneau, Alaska, May 18, 1905.

“To Wm. Waddleton:

You are hereby notified to come at once and make arrangements about either vacating or paying rent for the house and lot you are now occupying, to wit, Lot 6 in Block 13 of the Townsite of Juneau, Alaska, as per the official plat thereof, owned by James H. Pullen, Mary H. Wilson and Thomas A. Wilson, otherwise legal proceedings will be commenced immediately to eject you therefrom.

JAMES H. PULLEN,
MARY H. WILSON,
THOMAS A. WILSON.

By JOHN G. HEID,
Their Attorney.”

“Dfts. Exhibit No. 'A.' Received in evidence Sept. 24, 1914, in cause No. 1122-A. J. W. Bell, Clerk. By J. T. Reed, Deputy.”

I have testified that I wanted Mr. Heid to try to get me off of the lot; that is why I wrote him the letter as I did; I wanted him to do something; to start suit. I said that I was not unfair to him personally. That is true; I was not. I meant that I wanted him to have a friendly suit with me over the lot. It is true that I knew the townsite trustee had awarded the deed to the Pullens and against me and that that decision had been affirmed on appeal; but I did not think he could get me off the lot. I claimed the lot

for my own. I have been in the adverse, open, notorious and exclusive possession of that lot ever since I went on there, until the 12th day of June, 1914, this year; on that day I had been over at Douglas on some business and came back home about eight o'clock and when I went up to my cabin I saw a tent there on the lot and some men in the tent; and I asked them what they were doing there and they said they bought the lot—Mr. Baldwin said that he had bought the lot from the owners. I told him the lot was mine.

My cabin stands on the upper right hand corner of the lot [14—5] and is a two room building, about fifteen by twenty feet in size, and stands back some four or five feet from the corner of the lot on the upper side.

Redirect Examination.

This is a picture of my cabin taken about 1906 some time. And it shows the fence down in front, with a pile of lumber lying in the street in front of it; the fence runs down to the corner and then back on the lower side line of the lot for about thirty or forty feet and then turns back up the hill towards the mountain.

WHEREUPON, plaintiff introduced in evidence, without any objection from defendants, the said picture, which said picture is marked as Plaintiff's Exhibit —, and made a part of the record herein.

WITNESS.—This is a picture of the interior of my cabin and was taken about the same time as the other photograph.

WHEREUPON, the said picture was introduced

in evidence by the plaintiff, and was admitted by the Court, without objection from the defendants, and marked by the clerk as Plaintiff's Exhibit —.

Recross-Examination by Mr. COBB.

Those are the tax receipts for the taxes that I paid on Lot 6, Block 13. It is true that the receipts are issued to "Pullen Heirs, John G. Heid, Agent." I always objected to the receipts being so made out. They are marked, "Paid by Wm. N. C. Waddleton." What I meant when I wrote Mr. Heid that it was not my intention to be unfair to him personally was that I did not want him to be unfair to me and did not want to be unfair to him and did not want to make a personal matter of it. There had been a good deal of personal feeling among the attorneys here and I did not want him to feel that [15—6] way toward me.

(Witness excused.) [16—7]

[**Testimony of John Gustafson, for Plaintiff.**]

JOHN GUSTAFSON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

My name is John Gustafson. I live in Juneau and have so lived since 1897. I have lived next lot to Mr. Wm. N. C. Waddleton for about nine years. Waddleton has lived on Lot 6, Block 13, town of Juneau, since I came to Juneau. I have heard that the Pullen heirs owned the lot and had the deed to it. In 1912 Waddleton asked me to remove some ashes that had accumulated from my place on the lot. I have seen Waddleton going and coming to

(Testimony of Wm. N. C. Waddleton.)

the place and during the time that I have lived at my present place no one but Waddleton has occupied the lot he lives on.

A survey was made to determine the lines and it was discovered that I was over plaintiff's lot with my cabin and I moved the same.

No cross-examination. [17—8]

[Testimony of L. A. Moore, for Plaintiff.]

L. A. MOORE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have resided in Juneau, Alaska, since the 22d day of July, 1895—have lived during that time on the 3d lot above the Elks' Hall. Waddleton moved on the lot he is now on soon after I got the place I live in. I know that for a good many years Waddleton has claimed that he owned the lot he is on; I think it has been for about fifteen years he has claimed to own it. I saw him build a stone wall along in front of the lot down in below the cabin, about a foot or a foot and a half high, and along next to the street; he built that wall several years ago, but I don't remember the exact time. The house Waddleton lives in was on the lot before he moved into it.

Cross-examination by Mr. COBB.

It is a fact that the house Mr. Waddleton lives in was on the lot and where it is now before he moved into it, but I think it was a barn before he moved in and fixed it up.

(Witness excused.) [18—9]

[Testimony of Patrick Evoy, for Plaintiff.]

PATRICK EVOY, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have resided in Juneau for the past 28 years. I have known Wm. N. C. Waddleton for the past 20 years. I have lived in the town of Juneau and next to Waddleton for all the years since 1898; Waddleton was on the place where he now lives in 1898 and he has ever since been there. Waddleton built a stone wall along in front of the lot and about twenty-five feet long, below his cabin, about 6 or 8 years ago; and I saw him build a sewer there from the back end of his cabin down across the lot about the same time that he built the stone wall in front. That sewer was built down across the lot back about twenty-five feet from the street in front and was connected with the city sewer.

The front end of the lot was fenced down next to the street, and back a piece of the way—I don't know how far back—fenced about fifty feet back and then up towards the upper side of the lot.

While Mr. Waddleton was in jail in 1903 here in Juneau I had charge of the property for him and looked after it—had the keys to the house.

Cross-examination by Mr. COBB.

If Waddleton has been away from the property it has been for a short time only. The house was on the ground when he moved in.

(Witness excused.) [19—10]

[Testimony of E. R. Jaeger, for Plaintiff.]

E. R. JAEGER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have lived in Juneau since February, 1895. I lived at the head of Second Street then, up on the hill, east of Gold Street. I know that Mr. Waddleton has lived on the same lot where he now lives—to the best of my knowledge he has lived on that lot—I would consider that has been his home since 1895. I moved into the property where I now live in 1899 and Waddleton was living on the property then where he now lives. I don't know whether Waddleton has claimed to own it or not; but I do know, I remember, rather, that early, about the time that I left the present site of the Elks' Hall, 1899 or 1898, and I know that there was an adverse claim, and what disposition was made of it I don't know, but Waddleton remained in possession, and I presumed that the claim was settled in Waddleton's favor. Waddleton has claimed the property, because at the time we built the building occupied by the Cain Hotel we had occasion to use a certain portion of the property in order to get our material on the ground, and I spoke to him about using a corner of the lot.

No cross-examination.

(Witness excused.) [20—11]

[Testimony of Louis Corbielle, for Plaintiff.]

LOUIS CORBIELLE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have lived in Juneau for 18 years past. I have known Wm. N. C. Waddleton for the past 16 years and I know that he has lived in the same place where he now lives all during that time.

No cross-examination. [21—12]

[Testimony of George Harkrader, for Plaintiff.]

GEORGE HARKRADER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have lived in Juneau since the town of Juneau was first discovered—33 years—since the first of April, 1881; I have been in Alaska since January, 1874, and have lived in Juneau for the last 33 years. I know Wm. N. C. Waddleton and know where he lives. I met him there by his house in 1896; I asked him at that time where he was living and he says “Right here,” pointing to this house where he is living to day. He told me at that time that he owned the lot—in 1896.

No cross-examination. [22—13]

[Testimony of Henry Embola, for Plaintiff.]

HENRY EMBOLA, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have lived in Juneau since 1894. I have known

(Testimony of Henry Embola.)

Waddleton for 15 or 16 years. I now live in the same place where he lived when I first knew him 15 or 16 years ago. He told me first about ten years ago that the house and lot belonged to him.

No cross-examination. [23—14]

[Testimony of John Reck, for Plaintiff.]

JOHN RECK, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have lived in Juneau for 16 years. I know Waddleton and know where he lives. Waddleton lives upon the hill and he has lived in the same place ever since I have known him—I have known him for at least 14 years, maybe 15 years. I don't know anything about the titles, but he has always claimed to own that lot—it must be near 10 years since he has claimed to own that lot—about 1900 or 1902 or 1901; and the assessments of taxes for the city, he claimed the lot and said something about paying the taxes for the lot. Waddleton has often protested against the high assessments on his lot. I know personally that he was paying taxes on his lot.

Cross-examination by Mr. COBB.

I think there were others paying taxes on the lot, too, at some of the times—I think Judge Heid.

(Witness excused.) [24—15]

[Testimony of Thomas Knudson, for Plaintiff.]

THOMAS KNUDSON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I live out at the bar, up the channel from Juneau. I have known Waddleton for fifteen years. I used to come into town with milk from the dairy and stop my teams on the property up on the hill where he lives. He has always lived on the same lot.

No cross-examination. [25—16]

[Testimony of Enoch Johnson, for Plaintiff.]

ENOCH JOHNSON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have lived on Gastineau Avenue in the town of Juneau for a little over 20 years. I knew of Waddleton living the same place where he now lives 16 or 17 years ago; as far as I remember, he has always lived there. He claims that he owns that lot—he first told me that about 16 years ago, I guess.

No cross-examination. [26—17]

[Testimony of John F. Greene, for Plaintiff.]

JOHN F. GREENE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I have known Mr. Waddleton for four years past. Mr. Waddleton gave me his keys and asked me to look after his place while he was in jail; that was in 1912; he was living on that lot in 1912. For the

(Testimony of John F. Greene.)

year 1912 I paid the taxes for him on the lot, at his request.

Witness excused. [27—18]

[Testimony of John B. Marshall, for Plaintiff.]

JOHN B. MARSHALL, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. BURTON.

I am U. S. Commissioner of the Juneau Precinct and *ex-officio* Recorder for the Recording District in which the town of Juneau is embraced. I have here the book of records of the recording district which shows the official plat of the townsite of Juneau; and it shows that in 1902 Lot 6. Block 13, was embraced within the bounds of the townsite of Juneau, Alaska, that is lot 6 in Block 13 as it now is established.

Mr. COBB.—We will admit that fact.

Mr. BURTON.—All right, then.

Witness excused. [28—19]

WHEREUPON defendants introduced in evidence, without objection, deed from Townsite Trustee Thos. R. Lyons to Pullen heirs, which is as follows:

[Defendant's Exhibit "E"—Deed Dated November 10, 1898, Thomas R. Lyons to Pullen Heirs.]

THIS INDENTURE, made this 10th day of November, in the year of our Lord one thousand eight hundred and ninety-eight, by and between Thomas R. Lyons, as trustee for the townsite of Juneau, in the Territory of Alaska, party of the first part, and

James H. Pullen, Mary H. Wilson and Thomas A. Wilson, of —, in the county of —, and —, of —, part— of the second part, witnesseth:

WHEREAS, said party of the first part has been appointed trustee for said townsite by the Secretary of the Interior, under the provisions of sections 11 to 15, inclusive, of the act of Congress approved March 3, 1891, entitled "An act to repeal timber-culture laws, and for other purposes," (26 Stats., 1095), and

WHEREAS, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, dated June 3, 1891, for his guidance, and

WHEREAS, on the 13th day of October, A. D. 1898, said party of the first part, as such trustee, entered the tract of land upon which the townsite of Juneau is situate, being survey No. 1, of public surveys in Alaska, under said act, executed by Geo. W. Garside, United States deputy surveyor, under instructions from the United States marshal, *ex-officio* surveyor-general of Alaska, bearing date of the 8th day of March, 1892, approved by said United States marshal, *ex-officio* surveyor-general, on the 21st day of October, 1892, and

WHEREAS, said trustee has entered said land in trust for the several use and benefit of the occupants thereof, according to their respective interests, and has made survey thereof into lots, blocks, squares, streets, and alleys, and has assessed upon each of the lots in said townsite the sums of money

contemplated [29—20] by the instructions of the Secretary of the Interior, and

WHEREAS, said trustee finds that according to the true spirit and intent of said act that said parties of the second part are interested in said townsite and entitled to the premises thereon as hereinafter described, and

WHEREAS, said parties of the second part have paid the assessments upon said property amounting to the sum of thirty dollars.

NOW, THEREFORE, said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey, and confirm unto the said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situate in the town of Juneau, and Territory of Alaska, described as follows, to wit:

Lot six (6) in block thirteen (13) as per the official plat thereof.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever.

IN WITNESS WHEREOF, said party of the first part, as such trustee, has hereunto set his hand

and seal on the day and year first above written.

THOMAS R. LYONS, (Seal)

Trustee for the Townsite of Juneau, Alaska Territory.

In presence of:

ALFRED E. MALTBY.

EDWIN SHAW. [30—21]

Territory of Alaska.

BE IT REMEMBERED, that on this 10th day of November, A. D. 1898, before me, a Notary Public, came Thomas R. Lyons, to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal] ALFRED E. MALTBY. (Seal)

Notary Public for the District of Alaska.

Dfts. Exhibit No. "E." Received in evidence Sep. 25, 1914, in Cause No. 1122-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [31—22]

Whereupon defendant introduced in evidence, without objection, tax receipts for the years 1901, 1907, 1909, 1910, 1911, 1912 and 1913, as follows, same being marked Defendant's Exhibit "C."

pal taxes for the year 1913, on the following described property:

Block.	Lot.	Description.	Valuation.	Tax.
13	6	Lot & Building		24.00
		as same appears on Delinquent Tax Roll of City of Juneau for year 1913 at page 2		

Received payment Sept. 20, 1913.

Tax	\$24.00
Penalty	1.20
Interest15
	<hr/>
Am't Paid	25.35

W. T. LUCAS,

No. 935.

Tax Collector.

By _____,
Deputy.

No. 0214. TAX RECEIPT. Amt. \$9.00

Juneau, Alaska, 6/24, 1912.

Received of Pullen Heirs—J. G. Heid, Atty.,
_____ Dollars, in full for general municipal taxes levied by the City of Juneau for the year 1912, on the following described property:

Block.	Lot.	Real or Personal.	Amount.
13	6	Lot & Cabin	9 00
		Pd. by John Reck for W. N. C. Waddleton	

Total

B. M. BEHREND'S,

City Treasurer.

By B. N. SCHNOOR. [33—24]

of Juneau for the year 1910, on the following described property:

Lot.	Block.	Real or Personal.		Amount.
6	13	Lot & Bldg.	600	6 00
		Paid by Waddleton		

Total.....

B. M. BEHREND'S,
City Treasurer.
By G. McN. [35—26]

[Defendant's Exhibit "D"—Tax Receipt for Year 1906]

No. 25. TAX RECEIPT. Amt. \$6.60
Juneau, Alaska, Nov. 19, 1906.

RECEIVED OF Pullen Heirs, J. G. Heid, Agt.
_____ Dollars, in full for general municipal taxes levied by the City of Juneau for the year 190—, on the following described property:

Block.	Lot.	Real or Personal.		Amount.
13	6	Lot & Bldg.	600.00	6 60
		Paid by Wm. N. C. Waddleton		

Total.....

B. M. BEHREND'S,
City Treasurer.
By G. McNAUGHTON.

Dfts Ex. "D" for Ident. 9/24/14 #1122—A. J. T. R., Dep. Clk. [36—27]

[Testimony of John G. Heid, for Defendant.]

JOHN G. HEID, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. COBB.

My name is John G. Heid. I have lived in Juneau for over 27 years. I am an attorney at law. I knew — Pullen in his lifetime; he lived here in Juneau at one time. After his death I was the agent for Lot 6 in Block 13, for the Pullen heirs; the heirs consisted of J. H. Pullen, who was a son and Mary H. Wilson, who was a daughter of Pullen's, and her name before she married Thomas A. Wilson, was Mary H. Pullen. ~~The Pullens used to live on Lot 6 in Block 13, and had a house on it, a residence, and they moved away and left their property; there was two lots there; Casebolt got one of the lots, and Waddleton and some others claimed the other one, which is Lot 6 in Block 13, in controversy in this case; and we had a contest before the townsite trustee, over the lot, Crews representing Waddleton and I represented the Pullen heirs, under my power of attorney from J. H. Pullen. The result of the contest was that Thomas R. Lyons, Townsite Trustee, awarded the deed for the lot to the Pullen heirs, J. H. Pullen, Mary H. Wilson and Thomas A. Wilson, her husband. From this decision Waddleton appealed—this was in 1898, or along there somewhere—to the land office at Washington, and it was there decided against him and in favor of the Pullen heirs; that was in 1902. After the decision I met Waddleton and told him that he could remain on the~~

* Stricken by order of this court entered Dec. 4, 1915, pursuant to Certificate of Clerk of Court below, certifying that this matter was stricken from original bill of exceptions when settled and should have been omitted from Transcript of Record and form no part thereof, and should not be considered.

(Testimony of John G. Heid.)

lot, but that he must pay rent; he said that he couldn't pay rent for the house, was unable to do so, and that the little shack was not worth any rent. Times in Juneau were very slow then and it didn't have much rental value, and as I wanted to have some one on the lot to occupy it for the heirs, I told Waddleton then that [37—28] he could stay on the lot but he must pay something, must do something, and that he must pay the taxes, at least, and he agreed to pay the taxes and keep them up, and so I let him stay on the lot. Time went on and he paid some of the assessments against it and part of the time I had to pay myself, until in 1905 I wrote him a letter and told Waddleton in substance, that he must come and pay rent or vacate the premises, and he answered me saying that he would compromise the matter in some sort of a manner. At that time property in Juneau was not worth much, and I could not find the Pullen heirs and hence let the matter go, but I told the man Waddleton that he must keep the taxes paid, at least; sometimes he paid them and sometimes they were delinquent. He used to be after me to fix up the place, but because he wouldn't pay any rent, never had anything, I would not fix it up. The tax assessments were always made to the Pullen heirs, John G. Heid, agent, and sometimes I would send the notification of the taxes due to him and tell him to pay them. There was no stipulated sum for rent; it was an old shack and no one else would live in it.

(Testimony of John G. Heid.)

In 1906 I paid \$29.60 for street improvement in front of this lot.

I have here the tax assessment receipt, which I paid.

WHEREUPON, defendants offered in evidence said receipt which was admitted in evidence, and is as follows: [38—29]

[Defendant's Exhibit "G"—Tax Receipt.]

Feb'y. 28, 1906.

M. Pullen Heirs, J. G. Heid, Agent,
To City of Juneau, Dr.

Terms—————.

Rockland St. Assessment, Lot 6, Blk. 13.29.60

(Stamped)

Paid

Apr, 2, 1906,

B. M. Behrends, Banker,

Juneau, Alaska.

Defts. Exhibit No. "G." Received in evidence Sep. 25, 1914. In Cause No. 1122-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [39—30]

I paid that assessment myself.

Cross-examination by Mr. BURTON.

I knew the man was on this lot all the time, and I did not try to get him off except as I have said. I never instituted any suit to eject him. I notified him to get off or pay rent, and I left him in there, as I said, with the understanding that he was to pay the taxes and assessments against the lot as rent. I did not know that he was going to claim the lot until

(Testimony of John G. Heid.)

years after that; in fact, I did not think he could; I thought the matter was settled in the land office, and so I let him stay in there to hold the lot by someone occupying it for the Pullens. I never brought any suit to oust him after I wrote that notice in 1905 to him. I would see him at times and tell him to pay something, but he never had anything to pay with, so he would say. I never saw any fence around the lot at any time; he may have had a fence of some sort down in front along the street. The cabin on the lot used to be a barn, and is about twelve by fifteen or eighteen feet, and stands on one corner of the lot. The lot is 50 by 90 feet in size. Waddleton never said to me that he was not going to get off the lot nor pay rent or taxes and for me to sue him and put him off; and I did not so understand his letter to me. He never at any time told me to sue him, that he claimed the lot and I couldn't put him off.

J. H. Pullen is a brother of Mrs. Wilson, and Mr. and Mrs. Wilson own a half of the lot and J. H. Pullen the other half of it. I hold a power of attorney from J. H. Pullen. [40—31]

I never seen but one of the Pullen heirs, and this particular heir, J. H. Pullen, came to Juneau more than twenty years ago and expected to find quite an estate belonging to the Pullen heirs and was disappointed, and when shown this particular lot abandoned it and gave it up in disgust, and I have never received a letter or any word from him since that time, and I have never seen or heard at any time

from any of the other heirs; I do not know whether any of the heirs are living or dead; I never received any power of attorney from any of the Pullen heirs, excepting J. H. Pullen, which was prior to the said J. H. Pullen's coming to Juneau, and over twenty years ago; I have never communicated anything to J. H. Pullen for a great many years, or since the said J. H. Pullen was in Juneau, as aforesaid, concerning said lot. I have not heard from any of the Pullens or the Wilsons for a number of years—probably ten or more years; and I do not now know where they are.

On the —— day of ——, 1914, I conveyed the lot, under my power of attorney, to S. H. Millwee, by quitclaim deed.

WHEREUPON, the defendants offered in evidence Power of Attorney from J. H. Pullen to John G. Heid, covering Lot 6 in Block 13, Juneau, Alaska, to which tender the plaintiff then and there objected upon the grounds that it was irrelevant, incompetent and immaterial for any purpose; that it was a power of attorney given by only one of the owners of the property, and that he had not been heard from for years, etc.

Which objection was by the Court overruled and the said Power of Attorney admitted in evidence; to which ruling of the Court the plaintiff then and there in open court excepted.

Said Power of Attorney is as follows, to wit:

[41—32]

[Defendant's Exhibit "F"—Power of Attorney.]

KNOW ALL MEN BY THESE PRESENTS:

That I, J. H. Pullen, formerly of Barned, Maine, but now of the town of Juneau and District of Alaska, have made, constituted and appointed, and by these presents do make, constitute and appoint John G. Heid, of said town of Juneau in the said District of Alaska, MY TRUE AND LAWFUL ATTORNEY, for me and in my name, place and stead, to take full charge of and exercise a general supervision over all my property, both, personal property and lands, situated, lying and being in the said town of Juneau, to wit:

All that certain piece or parcel of land or town lot, originally located by one George Murdoch on April 28th, 1881, and recorded in Book "B of Records" on page 246, of the records of Harris Mining District, Alaska; together with all buildings and improvements thereon situated. Also all that certain piece or parcel of land or town lot 50x100 feet, being the identical lot conveyed on October 1st, 1885, by R. D. Crittenden to James Pullen by deed as it will appear of record in book "A I of Deeds," at page 202 of the records of said Harris Mining District; together with all buildings and improvements thereon erected; to demise, lease, let, grant, bargain and sell the same to whom and upon such terms and conditions and under such covenants, as the said J. G. Heid may see fit, to sign, seal, execute and deliver good and sufficient deed or deeds to the purchaser or purchasers of the same, and to do any

and all acts necessary to be done in the premises in order to protect and advance my interests in the premises.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done, in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute, shall lawfully do or cause to be done, by virtue thereof. [42—33]

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fourteenth day of May, A. D. 1888.

J. H. PULLEN. (Seal.)

Executed in the presence of:

United States,
District of Alaska.

This certifies that on this fourteenth day of May, 1888, before the undersigned, personally appeared the within-named J. H. Pullen, known to me to be the person described in and who executed the within instrument, and acknowledged the same to be his free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and seal the day and year last above written.

LOUIS L. WILLIAMS,

U. S. Commissioner.

[Seal of the U. S. Commissioner's Court.]

[Endorsed]: Power of Attorney. J. H. Pullen to John G. Heid. ———, 188—.

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 11:30 A. M., Dec. 30th, 1898, and duly recorded in book 4, Powers of Atty. on page 174 of the records of said District.

NORMAN E. MALCOLM,
District Recorder.

Sept. 25, 1914. In Cause No. 1122-A. J. W. Bell, Dfts. Exhibit No. "F." Received in evidence Clerk. By J. T. Reed, Deputy. [43—34]

Defendants offered in evidence deed from John G. Heid to S. H. Millwee for Lot 6, Block 13, Juneau, Alaska.

Plaintiff objected thereto upon the grounds that the same is irrelevant, incompetent and immaterial, in that it purports to be a deed to the whole of the lot, while the power of attorney is from J. H. Pullen only, and hence only conveys as to Pullen's interest in it. And it is a variance between the pleading and the proof, in that defendants in the answer allege the sole ownership of the lot in Millwee and this deed shows that he only owns an undivided one-half interest in it.

Which objection was by the Court overruled and the said deed admitted in evidence.

To which ruling of the Court plaintiff then and there, in open court, excepted upon the grounds stated in his objection.

The deed is in words and figures as follows, to wit:
[44—35]

[Defendant's Exhibit No. "E-1"—Deed Dated April 21, 1914, James H. Pullen et al, and S. H. Millwee.]

THIS INDENTURE, made this twenty-first day of April, in the year of our Lord one thousand nine hundred and fourteen, between James H. Pullen, Mary H. Wilson and Thomas A. Wilson, by John Heid, their attorney in fact, the parties of the first part, and S. H. Millwee of Juneau, Alaska, the party of the second part:

WITNESSETH: That the said parties of the first part, for *and consideration* of the sum of Ten Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns, the following described tract, lot or parcel of land, situated, lying and being in the City of Juneau, Alaska, particularly bounded and described as follows, to wit:

Lot numbered Six (6) in Block numbered thirteen (13), according to the official plat of said City of Juneau, made by G. W. Garside, U. S. Surveyor, and approved by the Trustee of the Townsite of Juneau, Alaska.

Together with all and singular the tentments, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion

and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances unto said party of the second part, and to his heirs and assigns forever, without recourse to said parties of the first part or their said attorney in fact, herein named.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seal the day and year first above written.

JAMES H. PULLEN,

By JOHN G. HEID,

His Attorney in Fact.

MARY H. WILSON,

By JOHN G. HEID,

Her Attorney in Fact.

Signed, sealed and delivered in the presence of:

CHAS. G. JOY.

J. H. COBB. [45—36]

THOMAS A. WILSON,

By JOHN G. HEID,

His Attorney in Fact.

U. S. America,

District of Alaska,—ss.

This is to certify, that on this 21 day of April, A. D. 1914, before me, J. H. Cobb, a Notary Public in and for the District of Alaska, duly commissioned and sworn, personally came John G. Heid, as Atty. in fact for James H. Pullen, Mary H. Wilson, and Thomas A. Wilson, to me known to be the individual described in and who executed the within in-

strument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned and in the capacity therein stated.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] J. H. COBB,
Notary Public in and for Alaska, Residing at Juneau, Alaska.

My commission expires Nov. 9th, 1914.

Filed for record at 4:40 P. M., June 12, 1914, and duly recorded in Book 24 of Deeds, on page 469.

United States of America,
Territory of Alaska,
Juneau Recording Precinct,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original records as taken from Book 24 of Deeds on page 469, and the whole thereof.

Dated September 25th, 1914.

[Seal of U. S. Commissioner.]

JOHN B. MARSHALL,
District Recorder.

Dfts. Exhibit No. "E-1." Received in evidence Sep. 25, 1914. In Cause No. 1122-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [46—37]

[**Testimony of Wm. N. C. Waddleton, for Plaintiff
(Recalled).**]

WM. N. C. WADDLETON, recalled as a witness in his own behalf, testified as follows:

Redirect Examination by Mr. BURTON.

I heard Judge Heid's testimony about telling me to pay the taxes on the lot. It is not true that I promised to pay the taxes if he would let me stay in the house; he never told me to pay the taxes for him. I paid the taxes always for myself and because I claimed the lot for myself; and I always objected to the receipt and assessment being made out to the Pullen heirs, John G. Heid, agent.

In 1902 I received a written notice from Lyons, the townsite trustee, notifying me of the decision of the land office in the contest. The notice I have here is the one he served upon me.

WHEREUPON, the plaintiff offered in evidence the said notice, which said notice was by the Court admitted in evidence, without any objection from the defendant, and which notice is in words and figures as follows, to wit:

[Plaintiff's Exhibit No. 3—Notice.]

IN THE OFFICE OF THE TRUSTEE FOR
TOWNSITE ENTRY OF LAND IN JU-
NEAU, ALASKA.

WM. N. C. WADDLETON,

vs.

JAMES H. PULLEN et al.

CONTEST LOT 6, BLOCK 13, JUNEAU.

To Wm. N. C. Waddleton, Contestant in the Above-
entitled Contest:

You are hereby notified that the decision of the undersigned trustee in said contest has been affirmed by the Honorable Commissioner of the General Land Office; and you are further hereby notified that you have 60 days from the date of service of this notice upon you within which to appeal to the Honorable Secretary of the Interior. [47—38]

Dated this 18 day of January, 1902.

THOMAS R. LYONS,

Townsite Trustee for Juneau, Alaska.

Notice. Service admitted January 20, '02. Plaintiff's Exhibit No. 3, received in evidence, Sep. 25, 1914, in cause No. 1122A. J. W. Bell, Clerk. By J. T. Reed, Deputy."

[Endorsed]: "Received Feb. 3d, 1902, at 1 o'clock P. M. (Signed) Wm. N. C. Waddleton."

WHEREUPON THE TESTIMONY WAS
CLOSED.

And the above and foregoing is the substance of all the testimony introduced in evidence on said trial.

BE IT FURTHER REMEMBERED that, at the close of the testimony the defendants made the following motion:

(Title of Court and Cause.)

“Now come the defendants, by their attorney, and move the Court to direct the jury to return a verdict for the defendants on the following grounds, to wit:

I.

Plaintiff has failed to produce any evidence which should support a verdict for him.

II.

Plaintiff has failed to produce in evidence any deed or other muniment of title to the premises in controversy, but relies solely upon the ten years' statute of limitation and the evidence fails to show that the plaintiff took or held any possession of the property adversely to the owner under an honest, *bona fide* belief or claim of ownership, [48—39] but such possession as plaintiff had was at all times subordinate to the true title; and the evidence further fails to show that the possession of the plaintiff was exclusive and actual as to any defined portion of said premises and is therefore insufficient to support a verdict for anything in plaintiff's favor.

J. H. COBB,

Attorney for Defendants.”

Which said motion was by the Court denied and overruled. To which ruling of the Court the defendants then and there, in open court, excepted.

And thereupon the Court instructed the jury, peremptorily, to return a verdict for the plaintiff for an undivided two-thirds interest in and to the lot in con-

troversy, to which instruction of the Court the defendant then and there excepted.

And the Court thereupon further instructed the jury as to the remaining one-third interest.

The above and foregoing bill of exceptions is hereby approved, allowed, and ordered filed as a part of the record herein, and within the time allowed by the orders and rules of the Court, made during the term at which said cause was tried.

ROBERT W. JENNINGS,
Judge.

Ordered refiled after signing.

R. W. JENNINGS,
Judge. [49—40]

Copy of the foregoing received this 27th day of January, 1915.

WINN & BURTON.

Filed in the District Court, District of Alaska, First Division. Jan. 27, 1915. J. W. Bell, Clerk. By J. J. Clarke, Deputy.

Refiled in the District Court, District of Alaska, First Division. Jul. 20, 1915. J. W. Bell, Clerk. By ————, Deputy. [50]

*In the District Court for Alaska, Division No. One,
at Juneau.*

No. 1122—A.

WM. N. C. WADDLETON,
Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,
Defendants.

Assignment of Error.

Now come the defendants, by their attorney, and assign the following errors committed by the Court on the trial of the above-entitled and numbered cause, upon which they will rely in the Appellate Court.

I.

The Court erred in refusing to grant the motion of the defendants, made at the conclusion of the testimony, to instruct the jury to find for the defendants.

II.

The Court erred in instructing the jury, peremptorily to return a verdict for the plaintiff for an undivided two-thirds interest in the property in controversy.

For said errors, and others manifest of record, defendants pray that the judgment of the District Court for Alaska be reversed, and the cause remanded.

J. H. COBB,
Attorney for Defendants.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Dec. 18, 1914. J. W. Bell, Clerk. By John T. Reed, Deputy. [51]

*In the District Court for Alaska, Division No. One,
at Juneau.*

WM. N. C. WADDLETON,

Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,

Defendants.

Writ of Error.

The President of the United States to the Honorable
the Judges of the District Court for Alaska, Di-
vision No. One, Greeting:

Because in the record and proceeding as also in the
rendition of the judgment upon a verdict, which is
in the said District Court before you or some of you,
wherein Wm. N. C. Waddleton, plaintiff, and S. H.
Millwee and W. W. Baldwin, defendants, a manifest
error hath happened, to the great damage of the said
S. H. Millwee and W. W. Baldwin,—

We being willing that error, if any hath happened,
should be corrected, and speedy justice done to the
parties in that behalf, do command you, if judgment
be therein given, that then, under your hand and seal,
distinctly and openly, you send the record and pro-
ceedings aforesaid, together with all things concern-
ing the same, to the United States Circuit Court of
Appeals for the Ninth Circuit, together with this
writ, so that you have the same in the City of San
Francisco, in the State of California, within thirty
days from the date hereof, that the record and pro-
ceedings aforesaid, being inspected, the said Appel-

late [52] Court may *may* cause further to be done therein to correct that error, which of right and according to the laws and customs of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, and the Seal of the District Court for Alaska, this the 18th day of December in the year of our Lord one thousand nine hundred and fourteen.

[Seal] J. W. BELL,
Clerk of the District Court for Alaska, Division
Number One.

Allowed by:

ROBERT W. JENNINGS,
District Judge for Alaska, Division Number One.

[53]

Filed in the District Court, District of Alaska,
First Division. Dec. 18, 1914. J. W. Bell, Clerk.
By —————, Deputy. [54]

*In the District Court for Alaska, Division No. One,
at Juneau.*

No. 1122—A.

WM. N. C. WADDLETON,

Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,

Defendants.

Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, S. H. Millwee and W. W. Baldwin, as plaintiffs, and —— P. L. Gemmett, as surety, are held and firmly bound unto Wm. N. C. Waddleton, in the penal sum of Seven Hundred and Fifty Dollars, to the payment of which sum well and truly to be made, we hereby bind ourselves, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the above-named Wm. N. C. Waddleton, as plaintiff, recovered a judgment against the above-named S. H. Millwee and W. W. Baldwin as defendants in the above-entitled and numbered cause, for the possession of Lot No. (6) Six in Block No. (13) Thirteen of the town of Juneau, Alaska, and costs; and whereas the about bound S. H. Millwee and W. W. Baldwin are suing out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment.

NOW, THEREFORE, If the above-named defendants, as [55] plaintiffs in error, shall prosecute said writ of error to effect, and if they fail to make good their plea, shall answer all damages and costs, then this obligation shall be null and void; otherwise to remain in full force and effect.

WITNESS OUR HANDS this the 16th day of
December, A. D. 1914.

S. H. MILLWEE.
W. W. BALDWIN.
P. L. GEMMETT.

Approved:

Dated 18th day of December, A. D. 1914.

ROBERT W. JENNINGS,
Judge.

[Endorsed]: Filed in the District Court, District
of Alaska, First Division. Dec. 18, 1914. J. W.
Bell, Clerk. By John T. Reed, Deputy. [56]

*In the District Court for Alaska, Division No. One,
at Juneau.*

No. 1122—A.

WM. N. C. WADDLETON,
Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,
Defendants.

Citation.

United States of America,—ss.

The President of the United States to Wm. N. C.
Waddleton, and to Messrs. Winn and Burton,
His Attorneys, Greeting:

You are hereby cited and admonished to *be appear*
in the United States Circuit Court of Appeals
for the Ninth Circuit, to be holden in the City of San
Francisco, State of California, within thirty days

from the date of this writ pursuant to a writ of error filed in the clerk's office of the District Court for Alaska, Division Number One, in a case wherein S. H. Millwee and W. W. Baldwin are plaintiffs and you are defendant in error, then and there to show cause if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this the 19th day of July, 1915.

[Seal] ROBERT W. JENNINGS,
Judge.

Attest: J. W. BELL,
Clerk. [57]

Service of the foregoing citation in Error admitted this 19th day of July, 1915.

WINN & BURTON,
Attys. for Wm. N. C. Waddleton. [58]

Filed in the District Court, District of Alaska, First Division. Jul. 19, 1915. J. W. Bell, Clerk.
By _____, Deputy.

No. 1122—A.

WM. N. C. WADDLETON,
Plaintiff,

vs.

S. H. MILLWEE and W. W. BALDWIN,
Defendants.

Praeceptum for Transcript.

To the Clerk of the District Court for Alaska, Division Number One.

Dear Sir: Please make up a Transcript of the Record for the U. S. Circuit Court of Appeals for the Ninth Circuit in the above cause, and include therein the following:

1st—Complaint.

2d—Answer.

3d—Reply (filed Sept. 23, 1914).

4th—Judgment.

5th—Bill of Exceptions.

6th—Assignment of Errors.

7th—Writ of Error.

8th—Bond on Writ of Error.

9th—Citation.

10th—This Praeceptum.

Said Transcript to be made up in accordance with the rules of the said Circuit Court of Appeals and transmitted to the clerk thereof in San Francisco, California.

J. H. COBB,

Attorney for Defendants and Plaintiffs in Error.

Filed in the District Court, District of Alaska, First Division. Jul. 20, 1915. J. W. Bell, Clerk.
By J. J. Clarke, Deputy. [59]

*In the District Court for Alaska, Division No. One,
at Juneau.*

No. 1122—A.

WM. N. C. WADDLETON,
Plaintiff and Defendant in Error,
vs.

S. H. MILLWEE and W. W. BALDWIN,
Defendants and Plaintiffs in Error.

Certificate [of Clerk U. S. District Court to Record.]

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division Number One, do hereby certify that the above and foregoing and hereto annexed fifty-nine pages of typewritten and written matter numbered from 1 to 59, both inclusive, constitute a full, true and correct copy of the record, and the whole thereof, prepared in accordance with the praecipe of defendant and plaintiff in error, on file in my office and made a part hereof, in Cause No. 1122—A, wherein Wm. N. C. Waddleton is plaintiff and defendant in error and S. H. Millwee and W. W. Baldwin are defendants and plaintiffs in error.

I further certify that the said record is by virtue of the Writ of Error and Citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Twenty-seven and 15/100 Dollars (\$27.15) has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the above-entitled Court this 28th day of July, A. D. 1915.

[Seal] J. W. BELL,
Clerk of District Court, Dist. of Alaska, Division
No. 1.

[Endorsed]: No. 2649. United States Circuit Court of Appeals for the Ninth Circuit. S. H. Millwee and W. W. Baldwin, Plaintiffs in Error, vs. Wm. N. C. Waddleton, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Received August 21, 1915.

F. D. MONCKTON,
Clerk.

Filed September 7, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

